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Supreme Court, U.S.
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No. 91-753

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1991

JOHN M. ABICK, et al,

Petitioners,

v

STATE OF MICHIGAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

BRIEF FOR RESPONDENT STATE OF MICHIGAN IN OPPOSITION

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QUESTION PRESENTED

DID MICHIGAN LAW CONFER ON PETITIONERS AN EXCLUSIVE PROPERTY RIGHT TO SERVE PROCESS IN A MICHIGAN DISTRICT COURT AND, IF SO, WERE PETITIONERS' RIGHTS UNDER U.S. CONST. AMEND. 5 AND AMEND. 14 VIOLATED WHEN THE MICHIGAN SUPREME COURT IN 1985 ENACTED A STATE-WIDE COURT RULE ON THE SUBJECT OF SERVICE OF PROCESS?

PARTIES TO THE PROCEEDING IN THE MICHIGAN COURTS

The complaint filed in the Michigan Court of Claims on February 29, 1988, named twenty-six individuals as plaintiffs. Those individuals are the first twenty-six individuals named as Petitioners in this petition (Petitioners Abick, Bradley, Carruthers, Clancy, Coles, Cotton, Daniel, David, DeRyck, Goldsmith, Hentschel, Hopkins, Jackson, Kay, Kiritsis, Lewand, Mullen, Radulovich, Raskin, Reeves, Ryan, Van Antwerp, Vessels, Viecelli, Watson and Wojtowicz). Only those individuals were named as plaintiffs-appellants in the Michigan Court of Appeals and the Michigan Supreme Court. The other twelve individuals named as Petitioners in this

petition (Petitioners Currie, Eston, Jackson, Kinnard, Newkirk, Perry, Poole, Ruhl, Shuford, Sikora, Solomon, and Weatherly) were not named in the proceedings in the Michigan courts.

The complaint filed in the Michigan Court of Claims named as defendants, jointly and severally, the State of Michigan, the State Judiciary Council, and the seven Justices of the Michigan Supreme Court: Chief Justice Dorothy Comstock Riley and Associate Justices Charles L. Levin, James H. Brickly [sic], Michael F. Cavanagh, Patricia J. Boyle, Dennis W. Archer, and Robert P. Griffin. After summary disposition was granted for all defendants in the Court of Claims, Petitioners abandoned their claims against all defendants except the State

of Michigan and only the State of Michigan was named as a defendant-appellee in the Michigan Court of Appeals and the Michigan Supreme Court. The State of Michigan is the only Respondent in this Court.

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JURISDICTION

Respondent agrees that the jurisdiction of this Court is invoked under 28 USC § 1257(a), but Respondent denies that Petitioners ever asserted a claim in the Michigan courts based upon the Contracts Clause, U.S. Const. art I, § 10, cl. 1. The complaint alleged deprivation of a property right in violation of the Due Process Clauses (¶3), and alleged the existence a contractual obligation and the breach of that obligation by Respondent (¶¶17-18), but neither in the complaint nor in the course of proceedings in the Michigan courts was there an allegation of a violation of the Contracts Clause. Because this issue was neither raised nor preserved in the Michigan courts, Respondent submits that this Court is without jurisdiction to review it.

COURT RULES INVOLVED

In addition to the statutes quoted in the appendix to the petition, the following provisions of present and former Michigan court rules are involved:

District Court Rules of 1969:

Rule 103(1) Process; Who May Serve

.1 Process in civil actions may be served by any person under or pursuant to § 8321(1) of the Revised Judicature Act and by any other person of suitable age and discretion who is not a party nor an officer of a corporate party upon leave of court.

36th District Court Local Rules:

Rule 4005 Bailiffs and Court Officers

.1 DCR 4005.7 and this rule apply to bailiffs and court officers appointed to serve process in the thirty-sixth district court.

.2 The chief judge may authorize the clerk to rotate without discrimination all process except writs of execution, attachment, and claim and delivery among all duly qualified bailiffs and court officers who are

actively engaged in the serving of process and who have filed written notice with the clerk of their willingness to serve process. The chief judge may specifically direct exceptions to the assignment system.

Michigan Court Rules of 1985 (effective March 1, 1985):

MCR 2.103 Process; Who May Serve

(A) Service Generally.
Process in civil actions may be served by any legally competent adult who is not a party or an officer of a corporate party.

STATEMENT OF THE CASE

On February 29, 1988, Petitioners filed a complaint in the Michigan Court of Claims alleging that they were employed as bailiffs by the 36th District Court, located in Detroit, Michigan.[1] The complaint alleged (¶9) they had a property interest in an "exclusive right to serve process exclusively" and that they had been deprived of this right in 1985 by enactment of the Michigan Court Rules, in particular MCR 2.103, which permits "any legally competent adult" to serve

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[1]The Michigan Court of Claims is created by statute with limited jurisdiction exclusively to hear and determine claims against the state, MCL 600.6419. The district courts are created by statute with limited jurisdiction to hear civil actions when the amount in controversy does not exceed $10,000, civil infraction cases, and misdemeanors, MCL 600.8301; 600.8311.

process. The complaint sought money damages and injunctive relief.

Respondent answered, denying, among other things, the existence of any such property interest. In addition, separate motions to dismiss were filed on behalf of the individual defendants and the State. With respect to Respondent State, the motion to dismiss asserted collateral estoppel based on Abick v State of Michigan, 607 F Supp 687 (ED Mich, 1985), aff'd Abick v State of Michigan, 803 F2d 874 (CA 6, 1986), and asserted that Petitioners failed to state a claim upon which relief could be granted because they never had exclusive jurisdiction for service of process.

The Court of Claims granted summary disposition to the individual defendants

based on collateral estoppel, and granted summary disposition to Respondent State on the merits, concluding that, "it cannot be argued with validity" that Michigan statutes and court rules "gave the plaintiffs an entitlement to serve process to the exclusion of all others. *** It clearly did not create, in this Court's opinion, any entitlement, as claimed by the Plaintiffs. ..." App to Pet for Cert, p A-8.

Petitioners appealed to the Michigan Court of Appeals with respect to Respondent State, and that court affirmed, concluding that the federal court judgment collaterally estopped Petitioners from raising their deprivation of property interest claim against Respondent. App to Pet for Cert, p A-4. The Michigan

Supreme Court denied discretionary leave to appeal.

The basis for Petitioners' claim to an exclusive property right to serve process in the 36th District Court is apparently based on one sentence in MCL 600.8322(1) which provides: "All process issued by the district court in civil actions shall be rotated among the bailiffs. ..." Respondent State contends that this sentence cannot be viewed in artificial isolation, but must instead be viewed in proper context within the framework of statutes and court rules governing service of process in the Michigan courts. MCL 600.8321 (quoted at App to Pet for Cert, p A-35), which immediately precedes the section upon which Petitioners rely, provides that persons

other than Petitioners may serve process in the district courts. In addition, the former court rules which applied in the 36th District Court before 1985, DCR 103 and 36th District Court Local Rule 4005 (both of which are quoted in full at pp 6-7 of this brief), also permit others to serve process. Petitioners challenge MCR 2.103 (quoted at p 7 of this brief), which became effective March 1, 1985, but the only change caused by this rule is that leave of court is no longer required before legally competent adults can serve process.

REASONS FOR DENYING THE WRIT

PETITIONERS' FEDERAL CLAIM IS BASED ENTIRELY UPON AN ASSERTED PROPERTY RIGHT UNDER MICHIGAN LAW WHICH DOES NOT EXIST.

Petitioners assert the existence of a federal question concerning the deprivation of a property interest without due process, but that claim depends entirely upon the existence of the property right in the first instance. As Petitioners appear to acknowledge, Pet, p 13, the existence of that property right depends exclusively upon state law. As this Court said in Board of Regents v Roth, 408 US 564, 577 (1972):

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. ***

> Property interests, of course, are not created by the Constitution. Rather, they are created by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Unfortunately for Petitioners, the state law property right which is necessary to support their federal claim--the exclusive and perpetual right to serve process in the 36th District Court of Michigan--simply does not exist. The trial court in the instant case ruled against them on the merits, and its decision is clearly correct as a matter of Michigan law. The court in Abick v State of Michigan, supra, 607 F Supp 687, also ruled on the merits of this state law issue, in addition to its ruling on the question of immunity.

Since the merits of the state law issue were clearly resolved against Petitioners, Respondent submits that any federal question concerning the proper application of collateral estoppel principles in the unique circumstances of the instant case is not sufficiently important to warrant review by this Court. Since there is no state law property right, the question of its deprivation without due process simply does not arise. Finally, Petitioners did not timely assert a Contracts Clause issue in the Michigan courts, so it is not properly before this Court.

CONCLUSION AND RELIEF SOUGHT

Because the outcome of this case depends upon a question of state law and its own unique facts, Respondent submits that no important federal question is presented and therefore this Court should deny the writ.

Respectfully submitted,

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November 25, 1991